

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

JENNIFER ANN MCTIGUE,) Case No. CV 18-275-CBM (PJW)
Petitioner,)
v.) REPORT AND RECOMMENDATION OF
H. KOBAYASHI, Warden, et al.,) UNITED STATES MAGISTRATE JUDGE
Respondents.)

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This Report and Recommendation is submitted to the Hon. Consuelo B. Marshall, United States District Judge, pursuant to 28 U.S.C. § 636 and Local Rule 72.6 of the United States District Court for the District of Hawaii. For the reasons discussed below, it is recommended that the Petition be denied and the action be dismissed with prejudice.

I.

SUMMARY OF FACTS AND PROCEEDINGS

Petitioner is a federal prisoner who is currently housed at the T.J. Mahoney Hale halfway house in Honolulu, Hawaii. (Opposition to Petition at 2.) Her anticipated release date is January 16, 2019. (Petition at 13.)

1 In July 2015, Petitioner pled guilty to conspiracy to commit wire
2 fraud, mail fraud, and money laundering, and was sentenced to 60
3 months in prison. (*United States v. McTigue, et al.*, CR 14-0010-CBM
4 (Doc. Nos. 191, 192, 235, 236).) In February 2018, she was
5 transferred from FCI Tallahassee to T.J. Mahoney to complete the final
6 phase of the BOP residential drug abuse program ("RDAP").¹ Petitioner
7 alleges that she was treated more severely than other residents at
8 T.J. Mahoney because one of the victims of her underlying crime was a
9 U.S. Probation officer. (Petition at 7.) Nevertheless, in May 2018,
10 Petitioner was transferred to home confinement, under the auspices of
11 the RDAP program. (Petition at 8.) On June 12, 2018, she was placed
12 back in the halfway house after employees became concerned that she
13 was drinking excessive amounts of water to dilute her urine samples,
14 which could mask drug use. (Petition at 8-9.) Petitioner alleges
15 that, despite being informally assured that she would be returned to
16 home confinement, on June 15, 2018, she was placed in prison in
17 Honolulu. (Petition at 10-11.)

18 On July 17, 2018, she filed the instant Petition, pursuant to 28
19 U.S.C. § 2241, complaining:

20 1. Her continued detention at FDC Honolulu violates her right
21 to due process and equal protection.

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¹ "RDAP is an intensive drug treatment program for federal
27 inmates with documented substance abuse problems," which, if completed
28 successfully, can result in up to a one-year reduction in a prisoner's
sentence. *Reeb v. Thomas*, 636 F.3d 1224, 1225 (9th Cir. 2011).

2. Respondents violated her procedural due process rights when they terminated her participation in the home confinement program.

(Petition at 14-20.)

5 Petitioner seeks release from her "unlawful" detention, an order
6 compelling Respondents to provide the Court with her inmate file for
7 *in camera* review, a declaration that her detention violates her
8 constitutional rights, an order that any future disciplinary actions
9 be referred to this Court, an order referring Respondents for
10 investigation, and an award of attorney fees and costs. (Petition at
11 21-22.) On August 10, 2018, Respondents filed an Opposition to the
12 Petition, in which they noted that, on August 2, 2018, Petitioner was
13 transferred from FDC Honolulu back to the T.J. Mahoney halfway house.

14 || (Opposition at 2.)

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17 The sum and substance of Petitioner's complaint is that
18 Respondents improperly removed her from the residential drug program
19 and returned her to prison. For the following reasons, the Court
20 concludes that the Petition is moot. In addition, the Court finds
21 that, even if it was not moot, her claims are not cognizable in
22 federal habeas corpus proceedings.

23 "[T]he essence of habeas corpus is an attack by a person in []
24 custody upon the legality of that custody, and . . . the traditional
25 function of the writ is to secure release from illegal custody."
26 *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *Burnett v. Lampert*,
27 432 F.3d 996, 999 (9th Cir. 2005). Because Petitioner is no longer in
28 federal prison and has been returned to the halfway house, the Court

1 can no longer grant her the relief she seeks. Thus, her request for
2 habeas corpus relief is moot. See *Abbott v. Federal Bureau of*
3 *Prisons*, 771 F.3d 512, 513 (9th Cir. 2014) (holding claims regarding
4 legality of RDAP eligibility rule rendered moot by BOP's decision to
5 re-admit prisoner to RDAP program); *Kittel v. Thomas*, 620 F.3d 949,
6 951 (9th Cir. 2010) (holding § 2241 petition challenging BOP denial of
7 early release pursuant to RDAP was mooted by petitioner's subsequent
8 transfer to halfway house, even though petitioner had suffered actual
9 injury by BOP's initial erroneous decision).

10 Petitioner acknowledges that she has been returned to the halfway
11 house, but complains that she has "not been returned to her original
12 status as a participant in the home-confinement program." (Brief in
13 Support of Petition at 1.) Respondent points out, however, that her
14 brief stay in home confinement was intended to be temporary until
15 space became available in the halfway house. (Opposition at 4.) In
16 any event, both the halfway house and home confinement are components
17 of the community-based program requirement of RDAP, which Petitioner
18 has not challenged here. Because Petitioner is seeking only release
19 from federal prison and she has been released, there is no further
20 relief that the Court can provide.²

21 Further, even were the Court to reach her other claims, it would
22 conclude that it does not have jurisdiction to review them.
23 Petitioner contends that the decisions by BOP staff were arbitrary and
24 capricious. She argues that staff failed to comply with BOP's own
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26 ² The other injunctive and monetary relief that Petitioner seeks
27 is not available in federal habeas. See *Douglas v. Jacquez*, 626 F.3d
28 501, 504 (9th Cir. 2010) ("[A] habeas court has the power to release a
prisoner, but has no other power.") (citations omitted).

1 program statements in revoking her RDAP status by failing to maintain
2 incident reports and by failing to give her appropriate notice.
3 (Petition at 14-20; Brief in Support of Petition at 2-9.) Generally
4 speaking, however, the Court lacks jurisdiction to consider BOP's
5 determinations under 18 U.S.C. § 3621. *Reeb v. Thomas*, 636 F.3d 1224,
6 1228 (9th Cir. 2011). Indeed, the BOP enjoys absolute discretion in
7 determining which prisoners are eligible to participate, or no longer
8 participate, in RDAP:

9 [A]ny substantive decision by the BOP to admit a particular
10 prisoner into RDAP, or to grant or deny a sentence reduction for
11 completion of the program, is not reviewable by the district
12 court. The BOP's substantive decisions to remove particular
13 inmates from the RDAP program are likewise not subject to
14 judicial review.

15 *Id.* at 1227.

16 As for Petitioner's constitutional claims, they, too, are without
17 merit because she does not have a constitutional right to be released
18 from prison before the expiration of her sentence. *Martin v.*
19 *Saunders*, 2010 WL 5563579, at *4 (C.D. Cal. Nov. 9, 2010) (citing
20 *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1
21 (1979)). Thus, "the possibility of early release upon completion of
22 RDAP . . . does not create a protected liberty interest" that is
23 subject to the federal Due Process Clause. *Id.*, citing *Jacks v.*
24 *Crabtree*, 114 F.3d 983, 986 n.4 (9th Cir. 1997). Finally,
25 Petitioner's argument that the BOP violated its own program statements
26 in removing her from RDAP does not state a federal claim. *Reeb*, 636
27 F.3d at 1227 ("[N]oncompliance with a BOP program statement is not a
28 violation of federal law.").

1 III.
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RECOMMENDATION

For all of these reasons, IT IS RECOMMENDED that the Court issue an Order (1) accepting this Report and Recommendation and (2) directing that the Petition be denied and the action dismissed with prejudice.

DATED: January 7, 2019.

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10 PATRICK J. WALSH
11 UNITED STATES MAGISTRATE JUDGE
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